

1 January 22, 2004, the trial court denied his motion to dismiss the prior strike
2 conviction allegation, sentenced him to 11 years and four months in state prison,
3 and imposed a \$10,000 restitution fine.

4 Petitioner unsuccessfully appealed his conviction and sentence to the
5 California Court of Appeal and the Supreme Court of California, which on March
6 16, 2005 denied review. He also unsuccessfully sought collateral relief from the
7 state courts. On May 23, 2007, the Supreme Court of California denied his final
8 petition for state habeas relief.

9 DISCUSSION

10 A. Standard of Review

11 This court may entertain a petition for a writ of habeas corpus "in behalf
12 of a person in custody pursuant to the judgment of a State court only on the
13 ground that he is in custody in violation of the Constitution or laws or treaties of
14 the United States." 28 U.S.C. § 2254(a).

15 It shall "award the writ or issue an order directing the respondent to show
16 cause why the writ should not be granted, unless it appears from the application
17 that the applicant or person detained is not entitled thereto." Id. § 2243.

18 B. Claims

19 Petitioner seeks federal habeas corpus relief on the grounds that he
20 received ineffective assistance of counsel, was not given Miranda warnings after
21 arrest and was not allowed to withdraw his plea of no contest.

22 It is well-established that a defendant who pleads guilty or no contest
23 cannot later raise in habeas corpus proceedings independent claims relating to the
24 deprivation of constitutional rights that occurred before the plea of guilty or no
25 contest. See Haring v. Prosise, 462 U.S. 306, 319-20 (1983) (guilty plea
26 forecloses consideration of pre-plea constitutional deprivations); Tollett v.
27
28

1 Henderson, 411 U.S. 258, 266-67 (1973) (same). The only challenges left open
 2 in federal habeas corpus after a plea of guilty or no contest are the voluntary and
 3 intelligent character of the plea and the nature of the advice of counsel to plead.
 4 See Hill v. Lockhart, 474 U.S. 52, 56-57 (1985); Tollett, 411 U.S. at 267.
 5 Petitioner's Miranda claim must be DISMISSED as a pre-plea violation not
 6 cognizable in federal habeas; liberally construed, however, the other two claims
 7 appear colorable under § 2254 and merit an answer from respondent. See Zichko
 8 v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal courts must construe pro
 9 se petitions for writs of habeas corpus liberally).

10 CONCLUSION

11 For the foregoing reasons and for good cause shown,

12 1. Petitioner's request to proceed in forma pauperis (docs # 2, 5 & 6)
 13 is GRANTED.

14 2. The clerk shall serve by certified mail a copy of this order and the
 15 petition and all attachments thereto on respondent and respondent's attorney, the
 16 Attorney General of the State of California. The clerk also shall serve a copy of
 17 this order on petitioner.

18 3. Respondent shall file with the court and serve on petitioner, within
 19 60 days of the issuance of this order, an answer conforming in all respects to Rule
 20 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
 21 habeas corpus should not be granted. Respondent shall file with the answer and
 22 serve on petitioner a copy of all portions of the state trial record that have been
 23 transcribed previously and that are relevant to a determination of the issues
 24 presented by the petition.

25 If petitioner wishes to respond to the answer, he shall do so by filing a
 26 traverse with the court and serving it on respondent within 30 days of his receipt
 27

1 of the answer.

2 4. Respondent may file a motion to dismiss on procedural grounds in
3 lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the
4 Rules Governing Section 2254 Cases. If respondent files such a motion,
5 petitioner shall file with the court and serve on respondent an opposition or
6 statement of non-opposition within 30 days of receipt of the motion, and
7 respondent shall file with the court and serve on petitioner a reply within 15 days
8 of receipt of any opposition.

9 5. Petitioner is reminded that all communications with the court must
10 be served on respondent by mailing a true copy of the document to respondent's
11 counsel. Petitioner must also keep the court and all parties informed of any
12 change of address.

13 SO ORDERED.

14 DATED: Jan. 09, 2008



CHARLES R. BREYER
United States District Judge